

- 3 -

three sides of the interior of said jamb, the mesh screen accumulating on and paying out from a spring biased roll within said jamb pocket portion .

### **REMARKS**

Claim 1, 2, 10 and 16 now stand rejected under 35 U. S. C. 103a as being unpatentable over Kramer in view of Warnick.

The following excerpts of U.S. case law represent Applicant's understanding of the test for obviousness.

### **OBVIOUSNESS**

The traditional test enunciated in Graham vs. John Deere Company 383 U.S. 1, 148 U.S.P.Q. 459 1966, for Section 103 nonobviousness requires the fact finder to make several determinations. The test provides that the scope and content of the prior art be determined, the differences between the prior art and the claims at issue be ascertained, and the level of ordinary skill in the pertinent art be resolved. Thus, the patentability of the claims at hand must stem from the fact that the specific combination of the claimed elements was not disclosed in the prior art and the additional allegation that the specific combination of claimed elements was nonobvious to one of ordinary skill in the art.

Clearly, the prior art does not suggest or provide any reason or motivation to make such a modification as purported by the Examiner. With reference to In Re: Regal, 526 F. 2d 1399, 1403 n. 6, 188 USPQ 136, 139 n. 6 (CCPA 1975).

"There must be some logical reason apparent from positive, concrete evidence of record which justifies a combination of primary and secondary references".

In Re: Geiger, 815 F. 2d 686, 688, 2 USPQ 2d 1276, 1278 (Fed. Cir. 1987) (obviousness can not be established by combining pieces of prior art absence some "teachings, suggestion, or incentive supporting the combination"): In Re: Cho, 813 F. 2d 378, 382, 1 USPQ 2d 1662, 1664 (Fed. Cir. 1987) ("discussing the Board's holding that the artisan would have been motivated to combine the references").

Therefore, it Applicant's view there is no evidence of motivation in the prior art, either within the references themselves, or knowledge generally available to one of ordinary skill in the art, to make the purported changes suggested by the Examiner to arrive at the claimed subject matter.

- 4 -

Respectfully, the Examiner is creating a 20/20 hindsight reconstruction using Applicant's invention as a blue print to allegedly find elements of Applicant's combination in the prior art. This is not permissible as set out below.

*In re Oetiker*, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992)

The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness. **There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination.** (emphasis added) That knowledge can not come from the applicant's invention itself.

*ATD Corporation v. Lydall, Inc.*, 48 USPQ 2d 1321, 1329 (Fed. Cir. 1998)

Determination of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention. **There must be a teaching or suggestion within the prior art, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources of information, to select particular elements, and to combine them in the way they were combined by the inventor.**(emphasis added)

In Re: Fritch, 23 U.S.P.Q. 2d 1780 (Fed. Cir. 1992)

"Wilson and Hendrix fail to suggest any motivation for, or desirability of, the changes espoused by the Examiner and endorsed by the Board. Here, the Examiner relied upon hindsight to arrive at the determination of obviousness. It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious(emphasis added). The court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

Referring now to United States Patent 3,842,890, hereinafter referred to as Kramer, there is taught a coilable closure device which includes a frame, a guide means and a vertical storage chamber for holding a single sheet of plastic which is vertically coilable upon itself within the storage chamber without the use of a post for storage. Structure is best seen in relation to figure 6 wherein the plastic sheet clearly is coiled upon itself in a tight roll without the need

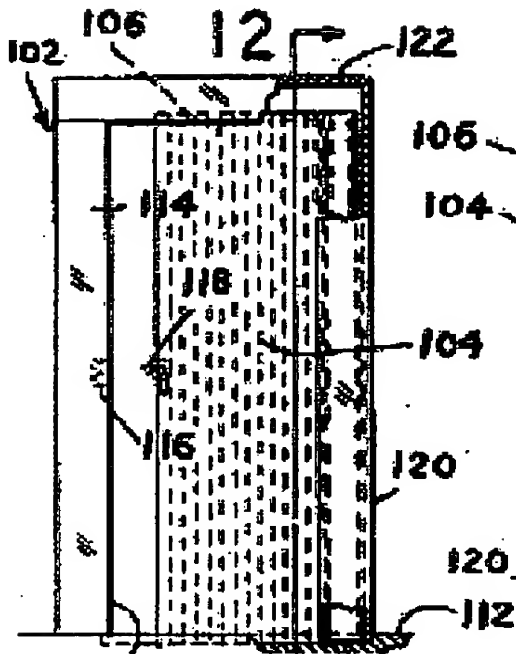
- 5 -

of a post. Referring to the detailed description and the figures the frame 32 is connected into the wall or other opening 33 and may be preassembled or assembled at the site. The frame includes a jamb side 34 and a storage jamb 36. The storage jamb 36 contains a closure member 46 in the form of a single sheet used to close the wall opening. The sheet 48 may be made of any suitable plastic. The thickness of sheet 48 is predetermined to permit the plastic sheet to readily coil about itself. A coiling guide 88 is formed within the storage jamb 36 along the entire vertical inner periphery thereof, which has a curved surface as shown in figure 6, so that the outermost coil of sheet 48 will slide along and be guided by coiling guide 88 to permit smooth coiling of sheet 48 within the storage jamb 36. Since the sheet is self coiling there is no need for the use of a vertical post or otherwise to wind about. In one embodiment reinforcing rods are included with this sheet to permit a minimum thickness of the sheet 48 while yet providing sufficient vertical strength. Clearly the storage jamb is formed on the frame as opposed to being formed with the frame as is the case with Applicant's invention. This is evidenced by the first section of Claim 1 of the Kramer reference set out below.

- 1. A storable closure device for a door opening comprising*
  - a. a frame connected across the door opening.*
  - b. a storage chamber formed on one side of the frame.*

as also seen in the figures and particularly Figure 11:

- 6 -

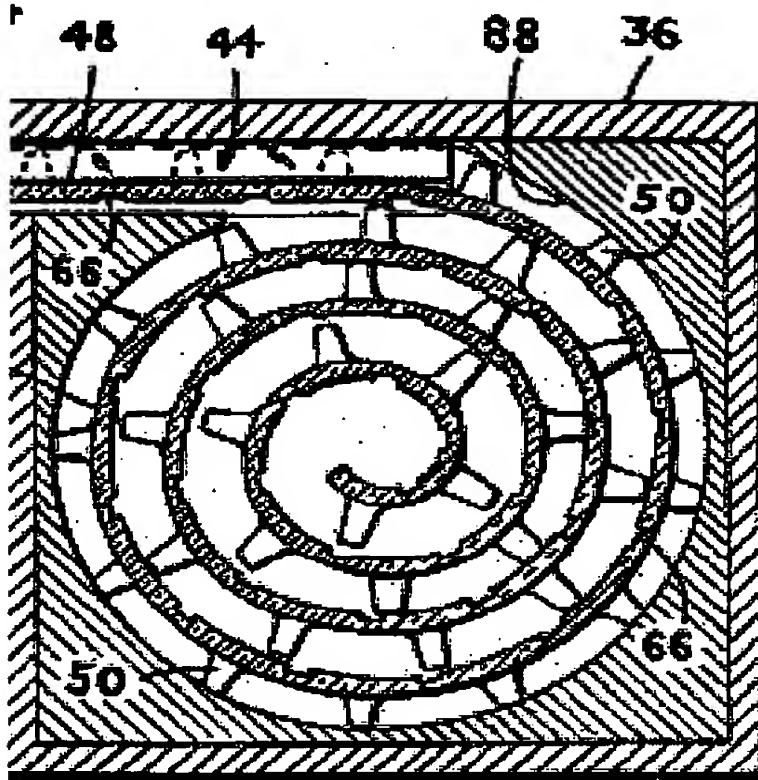


Clearly therefore the purposes of the present invention and that of Kramer are somewhat opposed. Although Kramer may provide a closure it is clearly a plastic sheet serving as a door and not as a mesh screen for the purpose of preventing insects from entering a dwelling. Although the door, one would argue, might prevent insects from entering the dwelling, it is clear it will not allow fresh air to enter the dwelling which would be permitted by the screen utilized with the present invention.

Guides are provided with present invention which extend from the handle portion and are adjustable therein and ride in a track provided in the header and the sill. See claims 2 and 10 in this regard. However these guides do not act as spacers to allow for coiling as is clearly

- 7 -

the case with respect to item 50 provided with the plastic sheet 48 as best seen in figure 6 and figure 10.



The spacers 50 space the coils to allow for smooth operation of the Kramer device and eliminate the need for a roll allowing self coiling of the door. The spacers in operation also run in the channels 42/70 provided with the assembly. In contrast the present invention relates to a mesh screen which is very thin whose only purpose is to block insects from entering the dwelling while permitting fresh air to enter therein at the same time.

Therefore the first issue that the Examiner alleges in his action on page 2, that Kramer discloses a closure assembly mounted within an opening comprising a jamb respectfully is not the case. Kramer provides a closure assembly with a jamb pocket mounted on the frame, not formed with the frame. Secondly, the Examiner has stated that Kramer includes a

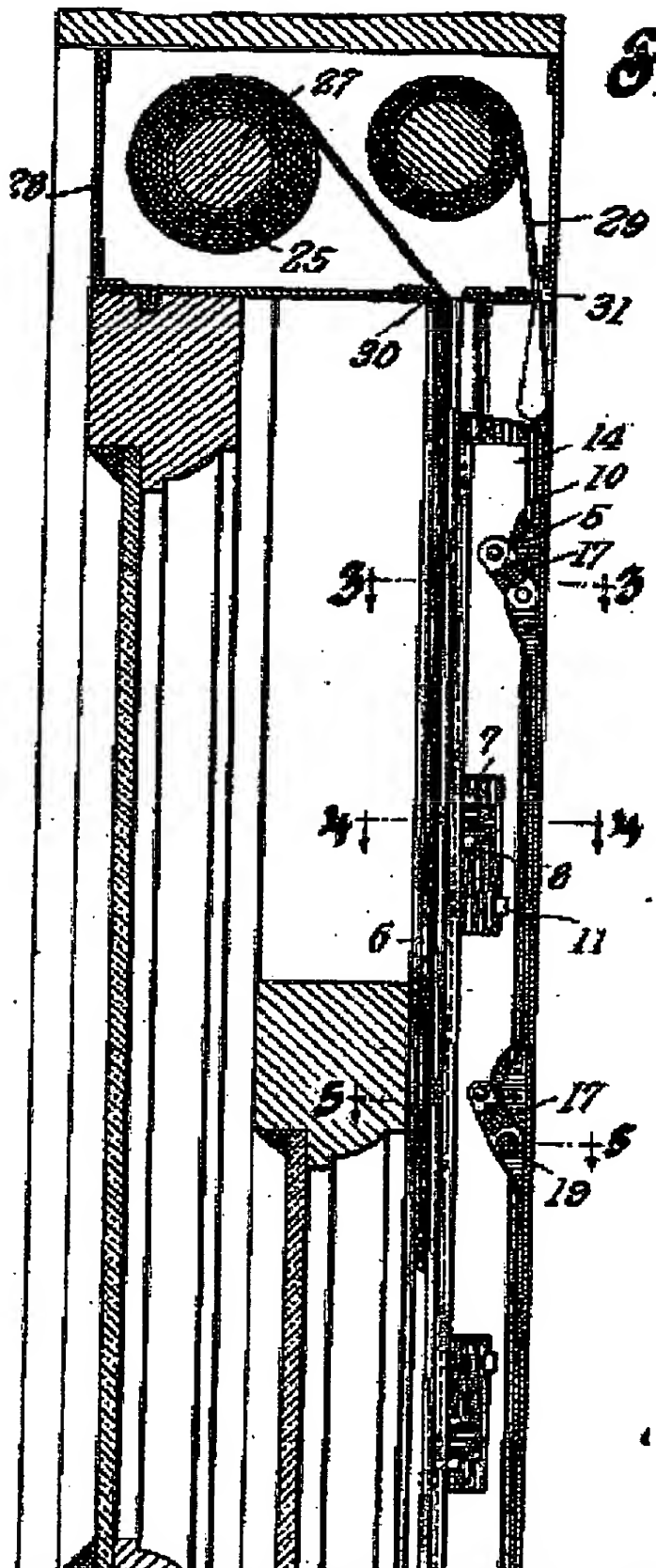
- 8 -

retractable biased screen. Respectfully the plastic sheet of Kramer is not a biased mesh screen. The retractable plastic sheet of Kramer is a closure that is to say a door and it does not serve a dual purpose of being a mesh screen nor is it analogous to a mesh screen. Kramer's closure is made from heavier plastic and is intended to serve as a door and not intended to serve as a screen at any time nor is there any disclosure within Kramer, Kramer having been carefully read by Applicant's Agent, which would suggest at any time that the heavier plastic door of Kramer might be used or analogous to a screen assembly. First of all Kramer will coil upon itself. Kramer does not include a post or a roll tube to accumulate the door of Kramer. It probably would not accumulate on a roll or a post and therefore the Kramer assembly is post-less unlike Applicant's present invention.

The Examiner has defined screen in his action. As a result applicant has added the limitation of mesh screen to the claim set which clearly identifies over Kramer and emphasizes the difference between the plastic roll up door of Kramer which cannot function as a mesh screen.

Referring now to Warnick U. S. Patent 1,756,496 hereinafter referred to as 'Warnick' there is taught a window screen assembly which in Warnick's words overcome the limitations of the prior art and provide for tight clamping of the side edges of the screen to avoid entrance of any insects around the screen edges. The clamping device is therefore provided and which consists of the lateral movement of a plate 10 as best seen in figure 2 with respect to flange 16 which as a consequence comes into clamping engagement with a flange 6. The side edges of the screen are held between felt strips in and roller 27 carried into box 28.

- 9 -



- 10 -

The question then becomes what advantage can the teaching of Kramer derive from the teachings of Warnick. Clearly there is no motivation in the Kramer reference, which deals primarily with a door made from plastic materials, to even refer to Warnick for any information regarding screening since there is no teaching or motivation regarding screening as an issue in the reference. The Examiner has clearly attempted to pick and choose in order to create the 20/20 hind sight reconstruction alleged by the Examiner.

Warnick discloses a retractable screen within a closure assembly which is a window. The problem being solved by Warnick is the prevention of insects entering around the edges of a screen assembly and therefore clamps the screen in the manner indicated.

So even if Kramer were to be combined with Warnick, which the Applicant suggests is not possible since they are mutually exclusive, what would the end construction be? Applicant asserts that the end result would be a screen assembly of Warnick disposed over the door assembly of Kramer which would still not result in Applicant's construction and would require a separate pocket for the door and a separate pocket for the screen assembly of Warnick in order to overlap the two constructions in an operable manner.

Clearly the construction of Kramer will not work as a window. The plastic construction including the spines and the interconnected sections just would be not be compatible or desirable for a window construction. Further even if Warnick were to be combined with Kramer it would be required that a separate box be provided for the screen assembly of Warnick as it could not be integrated into the construction of Kramer. The Kramer after market housing with the jamb pocket is necessary to allow for the paying out of the door of Kramer. Kramer is just not a mesh screen assembly. Therefore how can one skilled in the art combine the teachings of Kramer and Warnick absent of teaching in Kramer



- 11 -

that it would be desirable to provide a screen assembly in a similar construction to the door assembly of Kramer.

On the other hand Applicant's invention fits within the envelope provided by the window assembly. No additional width is required for the frame should screen assembly be present in the pocket of the jamb frame section or not. The resulting width would be identical so therefore no additional bulk is added to Applicant's invention as result of integrating a screen assembly in the jamb section and in the preferred embodiment the width is still 3 and 1/4 inches. Further no additional labour is required at the site when the window is being installed with the integral jamb pocket. It is only necessary to place the screen assembly in the jamb pocket after the window is installed. It is not necessary therefore with the Applicant's invention to provide an additional box added to the frames as is the case with Kramer. This box construction of Kramer is built onto the frame either on site or off property regardless requiring extra labour as opposed to Applicant's invention wherein the pocket is formed when the jamb section when manufactured by extrusion. Applicant's invention is therefore a dual function frame section which is manufactured by extrusion in a quicker manner resulting in improved economics and better performance through the window assembly since no seals are necessary.

Further there is no coil guide required with Applicant's structure which is therefore eliminated and the result is more aesthetically pleasing since the bulk to accommodate the door of the Kramer is eliminated. Applicant's invention fits within the envelope provided.

Applicant however has provided a window assembly including an integral jamb and jamb pocket manufactured as an integral unit by an extrusion process as defined in the amended claim 1 as follows:

- 12 -

*A window assembly comprising, a jamb having an interior, defining a jamb pocket portion and a retractable mesh screen disposed with a roll screen cassette contained within the jamb pocket portion integral with the jamb of the assembly, said jamb and said jamb pocket portion being an integral unit manufactured by an extrusion process when the window assembly is formed, said jamb pocket portion being defined by three sides of the interior of said jamb, the mesh screen accumulating on and paying out from a spring biased roll provided with said roll screen cassette disposed within said jamb pocket portion.*

The prior art combination cited Kramer in view of Warnick does not contain the limitations as provided in the above mentioned claim.

United States Patent Number 3,842,890, Kramer teaches a coilable closure device to open or close a door opening. The device includes a frame, a guide means, a vertical storage chamber and a single sheet of plastic vertically coilable upon itself within the storage chamber without the use of a post for storage when not in use. Whenever the door opening is to be closed the sheet is slid in the guide means across the frame to the plastic sheet if extra stiffness or rigidity is desired. The guide means are either fixed or pivotal and the top of the plastic sheet can be horizontal or slanted.

United States Patent Number 1,756,496 to Warnick teaches a device for clamping the side edges of a window screen comprising a stationary plate provided with a flange, a link pivoted on said stationary plate, means pivotally connected with said link to bear against the movable plate to cause the latter to move laterally when said link is rotated.

Applicant has followed the traditional test enunciated in Graham vs. John Deere Company 383 U.S. 1. 148 U.S.P.Q. 459 1966, for Section 103 nonobviousness and clearly set out the scope and content of the prior art identifying the differences between the prior art, Kramer in view of Warnick and the claims at issue and in fact has indicated that these reference do not

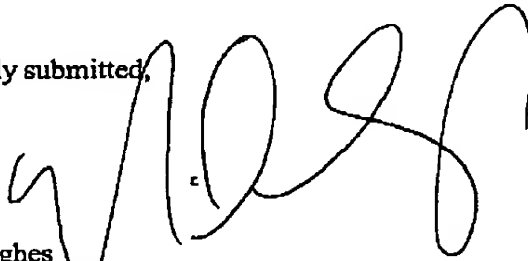
- 13 -

readily combine and are somewhat mutually exclusive. The patentability of the claims at hand stems from the fact that the specific combination of the claimed elements as set out in claim 1 above was not disclosed in the prior art cited and clearly for the reasoning presented above the specific combination of claimed elements including the mesh screen was nonobvious to one of ordinary skill in the art.

It is therefore respectfully requested for the reasons set out above and in view of the amendments as Applicant's claim that the Examiner withdraw the prior art references cited and allow the claims as amended.

If the Examiner has any questions, the Examiner is respectfully requested to contact Neil H. Hughes at (905) 771-6414 at his convenience.

Respectfully submitted,



Neil H. Hughes  
Agent for the Applicant  
Registration No. 33,636

NHH:hp  
Attachments